

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DAVID MICHAEL SMITH,

Plaintiff,

vs.

BLACK HAWK COUNTY JAIL, MIKE
KUBIK, J.D. HOSTETLER,

Defendants.

No. C06-2055-LRR

INITIAL REVIEW ORDER

This matter is before the court on the plaintiff's application to proceed in forma pauperis. The plaintiff submitted such application on July 28, 2006. Along with his application to proceed in forma pauperis, the plaintiff submitted a complaint. Also before the court is the plaintiff's application for appointment of counsel. The plaintiff filed such application on July 28, 2006.

Based on the application and certificate of inmate account, in forma pauperis status shall be granted. 28 U.S.C. § 1915. The Clerk of Court shall file the complaint without the prepayment of the filing fee. Given his current financial status, the plaintiff shall not be required to submit an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Nonetheless, the plaintiff shall submit monthly payments of 20 percent of the preceding month's income credited to his inmate account until the \$350.00 filing fee is paid. *See also* 28 U.S.C. § 1914(a) (requiring \$350.00 filing fee). The agency having custody of the plaintiff shall forward payments from his inmate account to the Clerk of Court each time the amount in the account exceeds \$10 until the filing fee is paid. 28 U.S.C. § 1915(b)(2).

Currently confined at the Iowa State Penitentiary in Fort Dodge, Iowa, the plaintiff, proceeding pro se, submitted a complaint under 42 U.S.C. § 1983 to redress the alleged

deprivation of his constitutional rights while confined at the Black Hawk County Jail. Jurisdiction is predicated on 28 U.S.C. § 1343. Under 28 U.S.C. § 1391(b), venue appears proper as the defendants are located in this district and the events giving rise to the instant action occurred in this district.

The court is unable to determine as a matter of law whether the plaintiff's claim is frivolous within the meaning of 28 U.S.C. § 1915A. Consequently, the court is of the opinion that the matter is best addressed after receipt of an answer and/or any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The Clerk of Court shall serve the complaint on the defendants and mail a copy of the complaint to the Black Hawk County Attorney without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Black Hawk County Attorney shall notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants shall file an answer or other dispositive motion by no later than December 18, 2006.

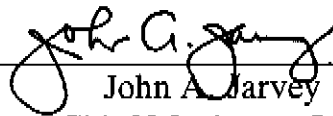
Finally, with respect to the plaintiff's application for appointment of counsel, the court does not believe counsel is warranted at this time because the claim is not complex and appears to be without merit. *See Phillips v. Norris*, 320 F.3d 844, 847 (8th Cir. 2003) (concluding that the denial of exercise for thirty-seven days did not constitute an atypical and significant hardship in the context of normal prison life). Accordingly, the court shall deny the plaintiff's application for appointment of counsel. If the court believes the assistance of counsel is necessary after the defendants file an answer and/or a dispositive motion, the court may reconsider its decision regarding the appointment of counsel.

IT IS THEREFORE ORDERED:

- 1) The plaintiff's application to proceed in forma pauperis is granted.

- 2) The Clerk of Court is directed to file the complaint without the prepayment of the filing fee.
- 3) The agency having custody of the plaintiff is directed to submit monthly payments of 20 percent of the preceding month's income credited to his inmate account until the \$350.00 filing fee is paid.
- 4) The Clerk of Court is directed to serve the complaint on the defendants and mail a copy of the complaint to the Black Hawk County Attorney without the prepayment of fees and costs. A copy of this order is to accompany the documents being served.
- 5) The Black Hawk County Attorney is directed to notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court.
- 6) The defendants are directed to file an answer or other dispositive motion by no later than December 18, 2006.
- 7) The plaintiff's application for appointment of counsel is denied.

DATED this 17 day of November, 2006.



John A. Harvey
Chief Magistrate Judge
UNITED STATES DISTRICT COURT

TO: WARDEN/ADMINISTRATOR
Iowa State Penitentiary, Fort Dodge, Iowa

Smith vs. Black Hawk Cty Jail, et al.

NOTICE OF COLLECTION OF FILING FEE

You are hereby given notice that David Michael Smith, #6230418, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: *Smith v. Black Hawk County Jail, et al.*, Case No. C06-2055-LRR. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$350.00 filing fee. Because the plaintiff has insufficient funds in his account, the court has not assessed an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Nonetheless,

. . . [the plaintiff] shall be required to make monthly payments of 20 percent of the preceding month's income credited to [his] account. The agency having custody of the [plaintiff] shall forward payments from [his] account to the clerk of court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). You must monitor the account and send payments to the Clerk of Court according to the system provided in 28 U.S.C. § 1915(b)(2).

Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.

Pridgen J. Watkins *by D. Ecklund*
Pridgen J. Watkins
U.S. District Court Clerk
Northern District of Iowa

**NOTICE OF LAWSUIT
and REQUEST FOR
WAIVER OF SERVICE OF SUMMONS**

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DAVID SMITH,

Plaintiff,

vs.

BLACK HAWK COUNTY JAIL, MIKE
KUBIK, J.D. HOSTETLER,


Defendants.

No. C06-2055-LRR

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint and a copy of the corresponding order from this court are attached. This complaint has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and complaint. Please sign the enclosed document where appropriate acknowledging receipt of the complaint and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: 11-17-06.

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this 11-17-06, 2006.


Signature (Clerk's Office Official)
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF
NOTICE OF LAWSUIT,
and WAIVER OF SERVICE OF SUMMONS**

(**Return this document within thirty days after 11-17-06, to the United States Clerk's Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

DAVID SMITH,

Plaintiff,

vs.

BLACK HAWK COUNTY JAIL, MIKE
KUBIK, J.D. HOSTETLER,

Defendants.

No. C06-2055-LRR

I acknowledge receipt of the complaint and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a defendant. I have received and/or read the complaint accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the complaint by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served within 60 days after _____, (the date Notice, Waiver and corresponding documents were sent).

Date _____

Signature _____

Printed name _____

As _____ of _____

(Title)

(Entity)

Date _____

Signature _____

Printed name _____

As _____ of _____
(Title) (Entity)

Date _____

Signature _____

Printed name _____

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(Title) (Entity)

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(Title) (Entity)

Date _____

Signature _____

Printed name _____

As _____ of _____
(Title) (Entity)

Date _____

Signature _____

Printed name _____

As _____ of _____
(Title) (Entity)

Address Form

Case Number: C06-2055-LRR

Date: November 16, 2006

To: Clerk of Court

RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: **All Named Defendants**
225 E. 6th St.
Waterloo, Iowa 50703